

## HOUSE BILL NO. 255

INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE DEFINITION OF "MENTAL DISORDER"; SPECIFYING THAT ~~ADDICTION TO DRUGS OR ALCOHOL OR DRUG OR ALCOHOL INTOXICATION IS NOT INCLUDED IN THE TERM ONLY IF EXCLUSIVE OF A CO-OCCURRING MENTAL DISORDER~~ A MENTAL DISORDER MAY CO-OCCUR WITH ADDICTION OR CHEMICAL DEPENDENCY; AND AMENDING ~~SECTION SECTIONS~~ 53-21-102 AND 53-21-126, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol ~~if the addiction is exclusive of any co-occurring mental disorder;~~

(ii) drug or alcohol intoxication ~~if the condition is exclusive of any co-occurring mental disorder;~~

(iii) mental retardation; or

(iv) epilepsy.

(c) A MENTAL DISORDER MAY CO-OCCUR WITH ADDICTION OR CHEMICAL DEPENDENCY.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

**SECTION 2. SECTION 53-21-126, MCA, IS AMENDED TO READ:**

**"53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts

1 relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that  
2 the respondent is suffering from a mental disorder, the court shall then determine whether the respondent  
3 requires commitment. In determining whether the respondent requires commitment and the appropriate  
4 disposition under 53-21-127, the court shall consider the following:

5 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the  
6 respondent's own basic needs of food, clothing, shelter, health, or safety;

7 (b) whether the respondent has recently, because of a mental disorder and through an act or an  
8 omission, caused self-injury or injury to others;

9 (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to  
10 others because of the respondent's acts or omissions; and

11 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or  
12 omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point  
13 at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's  
14 own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the  
15 respondent's relevant medical history.

16 (2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt  
17 with respect to any physical facts or evidence and clear and convincing evidence as to all other matters.  
18 However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat  
19 of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as  
20 to be material and relevant as to the respondent's present condition.

21 (3) The professional person appointed by the court must be present for the trial and subject to  
22 cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are  
23 tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a  
24 mental disorder and requires commitment. The written report of the professional person that indicates the  
25 professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such  
26 as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial  
27 closed to the public for the protection of the respondent.

28 (4) The professional person may testify as to the ultimate issue of whether the respondent is suffering  
29 from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence  
30 from the professional person or others that:

1 (a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's  
2 own basic needs of food, clothing, shelter, health, or safety;

3 (b) the respondent has recently, because of a mental disorder and through an act or an omission,  
4 caused self-injury or injury to others;

5 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others  
6 because of the respondent's acts or omissions; or

7 (d) (i) the respondent's mental disorder:

8 (A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the  
9 respondent's life or health;

10 (B) is treatable, with a reasonable prospect of success;

11 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for  
12 treatment; and

13 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point  
14 at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's  
15 own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the  
16 respondent's relevant medical history.

17 (5) The court, upon the showing of good cause and when it is in the best interests of the respondent,  
18 may order a change of venue.

19 (6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis  
20 of chemical dependency may satisfy criteria for commitment under this part."

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